

No. **87-1482**

Supreme Court, U.S.

FILED

DEC 9 1987

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

J. R. MASTELOTTO, HUMBOLDT OIL COMPANY, and
BONUS INTERNATIONAL CORPORATION, Petitioners,

v.

EXXON COMPANY, U.S.A.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

Peter L. Spinetta
SPINETTA, RANDICK & O'DEA
1800 Harrison, Suite 1771
Oakland, California 94612
Telephone: (415) 836-3555

32 MW



WRIT OF CERTIORARI

Petitioners J. R. MASTELOTTO, HUMBOLDT OIL COMPANY, and BONUS INTERNATIONAL CORPORATION, file this Petition for Writ of Certiorari asking the Supreme Court of the United States to review the decision of the Court of Appeals for the Ninth Circuit reversing a judgment entered by the United States District Court for the State of Nevada. Set forth below is the information required by Rule 21 of the Revised Rules of Supreme Court of the United States in support of this Writ:

(a) QUESTION PRESENTED

Is there any basis for the Ninth Circuit Court of Appeals' finding that the application of California law in this case frustrates federal objectives, or is such finding so unsupported by fact, law, or logic, as to render the Court of Appeals' reversal of the District Court's judgment a violation of Due Process?

(b) PARTIES

Petitioners in this case are J. R. MASTELOTTO ("MASTELOTTO"), HUMBOLDT OIL COMPANY ("HUMBOLDT"), and BONUS INTERNATIONAL CORPORATION ("BONUS"). MASTELOTTO is now and was at all times relevant the sole shareholder of BONUS, which, in turn, is the sole shareholder and parent of HUMBOLDT.

Respondent is EXXON COMPANY, U.S.A. ("EXXON").

(c)(1) TABLE OF CONTENTS

Page

(a) QUESTION PRESENTED	1
(b) PARTIES	1
(c)(1) TABLE OF CONTENTS	1
(c)(2) TABLE OF AUTHORITIES	2
(d) OPINION OF COURT BELOW	3
(e) JURISDICTION	3
(f) PERTINENT STATUS	3

(g)-(i) STATEMENT OF CASE	3
(j) ARGUMENT IN SUPPORT OF WRIT OF CERTIORARI	
I. Introduction: The Court's Opinion Overlooks Certain Contractual And Statutory Provisions Vitiating The Finding Upon Which It Is Based	5
II. Discussion: The Overlooked Contractual And Statutory Provisions Make It Impossible For Humboldt/Mastelotto To Have Served As An Exxon Dealer Against Exxon's Wishes	
A. Overlooked Contractual Provisions	6
B. Overlooked Statutory Provisions	7
III. Conclusion: The Assignment In This Case Simply Could Not Have Prevented Exxon From Effectively Disassociating Itself From Humboldt/Mastelotto ..	8
(k) APPENDIX.....	8

(c)(2) TABLE OF AUTHORITIES

	CASES	Page
<u>Humboldt v. Exxon</u>		
823 F.2d 373 (9th Cir. 1987)		3,5

	STATUTES	Page
<u>Federal</u>		
15 U.S.C. §1114(1)		6
15 U.S.C. §2800 <i>et seq.</i>		3
15 U.S.C. §2801 <i>et seq.</i>		5
28 U.S.C. 1254(1).....		3
28 U.S.C. 1332		4
28 U.S.C. 2101(c)		3

<u>California State</u>		
California Business and Professions Code		
Section 14320(a)		6
Section 21140.4		4

Section 21148	3,4,5,7,8
Section 21148(3)	6
Section 21148(3)(a)	7,8

(d) OPINION OF COURT BELOW

The decision and Opinion of the Ninth Circuit Court of Appeals sought to be reviewed by this Writ of Certiorari is reported as follows: *Humboldt v. Exxon*, 823 F. 2d 373 (9th Cir. 1987), a copy of which is attached hereto as Appendix A(1). A copy of the District Court's Order denying EXXON's Motion For A New Trial Or Judgment N.O.V. is attached hereto as Appendix A(2).

(e) JURISDICTION

(i) The judgment sought to be reviewed by this Writ of Certiorari was entered by the Court of Appeals for the Ninth Circuit on July 30, 1987.

(ii) Petitioners' Petition for Rehearing was denied by order filed by the Court of Appeals for the Ninth Circuit on September 10, 1987. (A copy of this Order is attached hereto as Appendix B.)

(iii) No cross-petition for writ of certiorari has been or is expected to be filed.

(iv) Jurisdiction of this Court to review by Writ of Certiorari the Ninth Circuit Court of Appeals' judgment in this case arises pursuant to 28 U.S.C. 1254(1) and 28 U.S.C. 2101(c).

(f) PERTINENT STATUTES

In arriving at its judgment, the Ninth Circuit Court of Appeals concluded that application of Section 21148 of the California Business and Professions Code to the facts of this case was preempted by the federal Petroleum Marketing Practices Act (15 U.S.C. 2800 *et seq.*). As both these statutes are lengthy, the pertinent portions are appended hereto as Appendix C(1) and Appendix C(2), respectively.

(g)-(i) STATEMENT OF CASE

J. R. MASTELOTTO and HUMBOLDT OIL COMPANY ("HUMBOLDT/MASTELOTTO") operated a petroleum distributorship pursuant to franchise agreements with EXXON

U.S.A., INC. ("EXXON"). By notice issued in November, 1981, EXXON terminated HUMBOLDT/MASTELOTTO's franchise agreements, effective February 28, 1982. This date was subsequently extended to May 28, 1982.

In January, 1982—after EXXON had issued its notice of termination but before the effective date of that notice and at a time when the legality of that action was still being disputed in the courts—HUMBOLDT/MASTELOTTO entered into an agreement with a Mr. Steve Beneto, owner of Beneto, Inc., to assign to them ("BENETO") its franchise agreements with EXXON in exchange for \$25,000.00. There was a collateral agreement that, once BENETO succeeded to HUMBOLDT/MASTELOTTO's franchise, the former would appoint the latter as one of their EXXON dealers.

EXXON refused to approve HUMBOLDT/MASTELOTTO's contemplated assignment of its franchise agreements to BENETO, giving rise to a claim by HUMBOLDT/MASTELOTTO against EXXON for violation of Section 21148 of the California Business and Professions Code.⁽¹⁾ This statute essentially provides that a franchisor (such as EXXON) cannot withhold its consent to the assignment of a petroleum franchise (such as is involved in this case) unless it can demonstrate that the prospective assignee does not meet its uniformly adopted requirements or that it was not first afforded an opportunity to purchase the franchise itself upon trial. EXXON failed to make such a showing and the jury returned a verdict in the amount of \$750,000.00 ⁽²⁾ in favor of HUMBOLDT/MASTELOTTO on account OF EXXON's violation of Section 21148. The District Court denied EXXON's Motion For A New Trial Or For Judgment N.O.V., upheld the jury's verdict on the foregoing claim, and entered judgment accordingly.

(1) This claim was filed as part of a Cross-Complaint in an action already pending in the United States District Court for the division of Nevada (Reno). The District Court had jurisdiction over the claim pursuant to 28 U.S.C. §1332 (diversity of citizenship), as well as by virtue of the doctrines of pendant and concurrent jurisdiction.

(2) Pursuant to Section 21140.4 of the California Business and Professions Code HUMBOLDT/MASTELOTTO was entitled to treble its actual damages.

As detailed below, this judgment was reversed by the Ninth Circuit Court of Appeals based upon a finding which is completely unsupported in fact, law, or logic. Petitioners truly come to you, therefore, as the court of last resort, not to resolve decisional conflicts or established precedent, but to correct a grievous and clear-cut wrong which only you can rectify. This wrong—in a jurisprudential sense—lies not so much in the result wrought by Ninth Circuit Court of Appeals, as it does in the fact that this result has no basis whatsoever in fact or reason, and accordingly, must be deemed to have been arrived at in violation of Petitioner's Due Process rights.

(j) ARGUMENT IN SUPPORT OF WRIT OF CERTIORARI

I

INTRODUCTION: THE COURT'S OPINION
OVERLOOKS CERTAIN CONTRACTUAL AND
STATUTORY PROVISIONS VITIATING
THE FINDING UPON WHICH IT IS BASED

The Ninth Circuit's Opinion holds that the Petroleum Marketing Practices Act ("PMPA", 15 U.S.C. §2801 *et seq.*) preempts application in this case of California's assignment law relating to petroleum franchises (Section 21148 of the California Business and Professions Code). This decision is expressly predicated by the Court of Appeals on its finding that to allow "Mastelotto to assign his franchise rights to Beneto (with whom he had a collateral agreement whereby Mastelotto would remain an Exxon dealer) would effectively deny Exxon its PMPA right to disassociate itself from Mastelotto". *Humboldt v. Exxon*, 823 F.2d 373 (9th Cir. 1987), at page 375. This finding not only overlooks, but runs squarely counter to, certain contractual and statutory provisions which make clear that the assignment in question, even if considered in conjunction with the aforementioned collateral agreement, could not possibly have prevented EXXON from disassociating itself from HUMBOLDT/MASTELOTTO. The contractual provisions referred to are those set forth in Paragraph 13 of the very

distributorship agreements sought to be assigned, and the statutory provision in Section 21148(3) of the California Business and Professions Code.

II

DISCUSSION: THE OVERLOOKED CONTRACTUAL AND STATUTORY PROVISIONS MAKE IT IMPOSSIBLE FOR HUMBOLDT / MASTELOTTO TO HAVE SERVED AS AN EXXON DEALER AGAINST EXXON'S WISHES

A. Overlooked Contractual Provisions

No one can use EXXON's trade name, trademark, brand name, label, insignia, symbol or imprint without EXXON's ultimate permission. (See, generally, 15 U.S.C. §1114 (1) and California Business and Professions Code §14320(a).)

EXXON's distributor agreements — such as those sought to be assigned by HUMBOLDT / MASTELOTTO to BENETO in this case — do allow the distributor himself to “brand” customers (that is, authorize them to use the EXXON name and mark) but only pursuant to provisions which effectively reserve to EXXON the right to compel those customers to discontinue such brand identification at any time. This is accomplished by requiring the distributor to obtain agreements from his customers that they will cease using the EXXON “trade name, trademark, brand name, label, insignia, symbol or imprint . . . immediately . . . upon demand by [EXXON].” See the highlighted portions of Paragraph 13 of EXXON's distributor agreements with HUMBOLDT / MASTELOTTO, attached hereto as Appendix D [Exhibits 2 and 3 at Trial].

In light of the foregoing contractual provisions, there is simply no way the assignment of HUMBOLDT / MASTELOTTO's distributor agreements with EXXON could have frustrated the latter's desire to dissociate itself from the former, even given the collateral agreement with BENETO to make HUMBOLDT / MASTELOTTO an EXXON dealer, since that agreement could not have been implemented except with EXXON's approval.

It should be added that BENETO's power to appoint HUMBOLDT/MASTELOTTO as an EXXON dealer pursuant to the distributor agreements sought to be assigned to him would have, in any event, only lasted as long as HUMBOLDT/MASTELOTTO's right to remain an EXXON distributor under those agreements—that is, until the effective termination date of the agreements. Thus, even if EXXON did not exercise its contractual rights under Paragraph 13 of the distributor agreements to prevent HUMBOLDT/MASTELOTTO from serving as an EXXON dealer, the assignment of those agreements would not have prolonged EXXON's association with HUMBOLDT/MASTELOTTO one iota. Indeed, it is ironic but true, that the assignment in question, far from posing any impediment to EXXON's desire to disassociate itself from HUMBOLDT/MASTELOTTO would actually have facilitated it since, after the assignment, EXXON could immediately have taken steps to prevent HUMBOLDT/MASTELOTTO from using the EXXON name and mark instead of having to wait for the distributor agreements to terminate.

B. Overlooked Statutory Provisions

Section 21148 of the California Business and Professions Code expressly allows petroleum franchisors, such as EXXON, to disapprove proposed assignments for virtually any reason, as long as uniformly applied. See, especially, subparagraph (a)(3) of Section 21148, attached hereto as Exhibit C(1). Thus, there is no way Section 21148 can be employed to defeat a franchisor's desire to disassociate itself from any particular person: The franchisor need only refuse to approve any assignment which might, directly or indirectly, involve it in an undesired association, or the franchisor can simply condition its approval on the absence of any such involvement. As it relates to this case, EXXON, pursuant to Section 21148, could have conditioned its approval of the assignment at issue on BENETO refraining from "branding" HUMBOLDT/MASTELOTTO as an EXXON dealer. In this manner, EXXON could readily have complied with Section 21148 without sacrificing its acknowledged PMPA right to disassociate itself from HUMBOLDT/MASTELOTTO. Under these

circumstances, it is difficult to see how the PMPA can be said to preempt the application of Section 21148 in this case.

III

CONCLUSION: THE ASSIGNMENT IN THIS CASE SIMPLY
COULD NOT HAVE PREVENTED EXXON FROM
EFFECTIVELY DISASSOCIATING ITSELF FROM
HUMBOLT/MASTELOTTO

There is no quarrel with the premise that EXXON has the right to disassociate itself from HUMBOLDT/MASTELOTTO. However, it is respectfully submitted that the Ninth Circuit failed to demonstrate how the assignment herein at issue would or could have frustrated that right. Certainly, the collateral agreement entered into between BENETO and HUMBOLDT/MASTELOTTO would not have caused it to do so (irrespective of what the parties or their counsel may have thought); for, as discussed above, Paragraph 13 of the very distributor agreements sought to be assigned gives EXXON the right to stop any customer or the distributor from using the EXXON brand against its wishes. Additionally, pursuant to subparagraph (a)(3) of Section 21148, EXXON could have conditioned approval of the assignment in question on BENETO not implementing the collateral agreement. Thus, there is absolutely no basis in fact or law for the finding by the Ninth Circuit which gave rise to its decision. Indeed, that finding is directly contrary to the evidence and applicable law of the case.

(k) APPENDIX

Attached hereto are the following Appendix items:
Appendix A(1):

Humboldt v. Exxon, 823 F.2d 373 (9th Cir. 1987)

Appendix A(2):

Order Denying Judgment N.O.V. Or For A New Trial

Appendix B:

Order Denying Petition For Rehearing dated September 10, 1987

Appendix C(1):

California Business and Professions Code, Section 21148

Appendix C(2):

15 U.S.C. §2800 *et seq.*

Appendix D:

Paragraph 13 of Exxon Distributor Agreement with
Humboldt/Mastelotto

Respectfully submitted,

SPINETTA, RANDICK & O'DEA

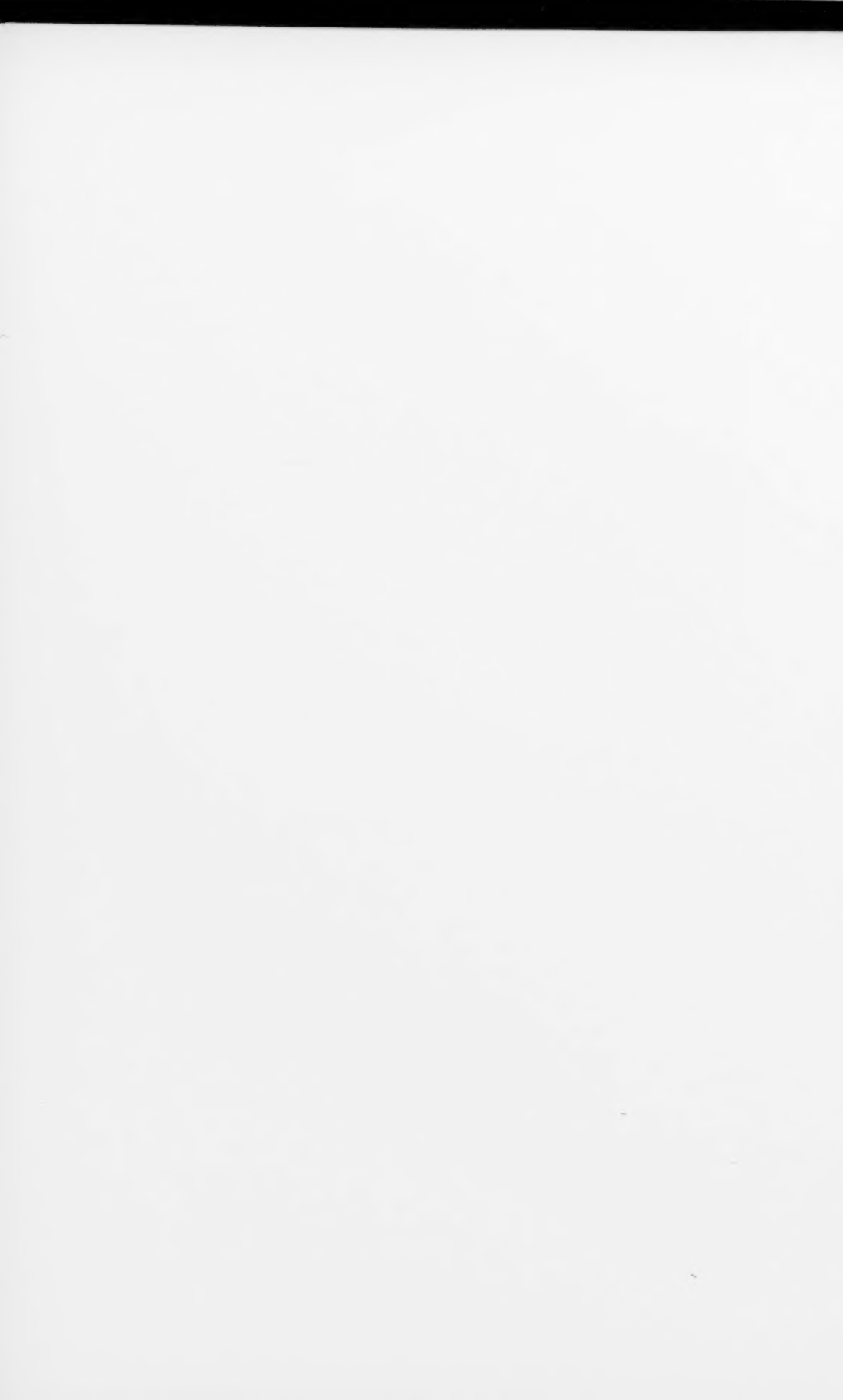
By: Peter L. Spinetta

Peter L. Spinetta

Attorneys for Petitioners

J. R. MASTELOTTO, HUMBOLDT OIL COMPANY and
BONUS INTERNATIONAL CORPORATION

APPENDIX



APPENDIX A (1)

CONTRACTS

Cite as 87 Daily Journal D.A.R. 4746

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Humboldt Oil Co., Inc. and J.R. Mastelotto,
Plaintiffs,

v.

Exxon Company, U.S.A.,

Defendant.

Nos. 86-1916;
86-1956
D.C. No.
R-82-29-BRT
OPINION

Exxon Company, U.S.A.

Cross-Complainant / Appellant / Appellee,

v.

Humboldt Oil Co., Inc. and J.R. Mastelotto,
Cross-Defendants / Appellees / Appellants,

and

Bonus International Corporation,

Cross-Defendant / Appellee.

Argued and Submitted

May 12, 1987 — San Francisco, California

Filed July 30, 1987

Before: Otto R. Skopil, Jr., Jerome Farris and
Diarmuid F. O'Scannlain, Circuit Judges.

Per Curiam

Appeal from the United States District Court
for the District of Nevada

Bruce R. Thompson, District Judge, Presiding

COUNSEL

Peter L. Spinetta, Oakland, California, for the plaintiffs/cross-defendants/appellees/appellants.

John R. Reese, San Francisco, California for the defendant/cross-complainant/appellant/appellee.

OPINION

PER CURIAM:

Exxon appeals a \$750,000 judgment for damages for violation of California Business and Professions Code § 21148 entered on a jury verdict for Humboldt/Mastelotto/Bonus. Humboldt/Mastelotto cross-appealed. Because we find that application of such statute is preempted by federal law, we reverse the judgment for Humboldt/Mastelotto/Bonus and dismiss the cross-appeals.

BACKGROUND

Jerry Robert Mastelotto and his corporation, Humboldt Oil ("Humboldt/Mastelotto"), purchased Exxon products under franchise agreements for resale. Mastelotto and Bonus International("Bonus"), another of his corporations, executed security agreements as guarantors of the Exxon purchases. In 1981 Mastelotto was convicted of fraud in the sale of mislabeled and misbranded motor oil. *United States v. Mastelotto*, No. 80-0454-01 (N.D. Cal. 1983): see *Humboldt Oil Co. v Exxon*, 532 F. Sup. 896, 898 (D. Nev. 1982). Because of the conviction, Exxon terminated its franchise agreement pursuant to the Petroleum Marketing Practice Act ("PMPA"), 15 U.S.C. §§ 2802(b)(2)(C) and 2802(c) (12)(1982). Humboldt/Mastelotto began the present action when they secured a preliminary injunction enjoining the termination. *Humboldt v Exxon*, 532 F. Supp. at 901. That injunction was vacated by this court. *Humboldt v. Exxon*, 695 F.2d 386, 389-90 (9th Cir. 1982).

Mastelotto alleged that Exxon orally agreed to assignment of the franchise, which was prohibited in the written instrument. However, when Mastelotto offered the franchise to Exxon under a franchise agreement right-of-first refusal, Exxon did not accept.

Mastelotto planned to sell and to assign the franchise to Steve Beneto, with whom he had a collateral agreement under which Mastelotto would purchase petroleum products for retail resale. Mastelotto would thus remain an Exxon dealer.

After the franchise termination notice, Mastelotto/Humboldt stopped paying for petroleum products received and ultimately owed Exxon \$816,000. Exxon filed a cross-complaint for money

due, joining Bonus as defendant guarantor. Humboldt/Mastelotto cross sued alleging, *inter alia*, Exxon's breach of an oral contract to accept an assignment of Humboldt/Mastelotto distributorships, intentional interference with prospective economic advantage, and violation of the California Franchise Dealer's Fair Practices Act, Cal. Bus. & Prof. Code § 21148 (West 1987).

A three-day jury trial on the cross-claims resulted in an \$816,000 verdict for Exxon for the amount due it for the products Humboldt/Mastelotto had received. The same jury awarded Humboldt/Mastelotto \$1 each on their claims for breach of contract and intentional interference with prospective business relationships. On the claim under the California Franchise Dealers' Fair Practices Act, Cal. Bus. & Prof. Code § 21148, the jury awarded Humboldt/Mastelotto damages of \$750,000. The court offset the awards. From this finding Exxon appeals.

JURISDICTION

Jurisdiction of the district court is based upon diversity, 28 U.S.C. § 1332, and PMPA, 15 U.S.C. § 2805. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STANDARD OF REVIEW

We review the interpretation of federal and state laws, including the preemption issue, *de novo*. *Matter of McLinn*, 739 F.2d 1395, 1397 (9th Cir. 1984)(en banc); *Atlantic Richfield Co. v. Herbert*, 806 F.2d 889, 891 (9th Cir. 1986).

ANALYSIS

The Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2802 *et seq.*, was intended to provide a single, uniform set of rules governing termination and non-renewal of petroleum franchises to reduce friction between franchisors and franchisees in marketing of motor fuels. S. Rep. No. 731, 95th Cong., 2d Sess. 19 (hereinafter S. Rep.), *reprinted in* 1978 U.S. Code Cong. & Admin. News 873, 877. *See Huth v. B.P. Oil, Inc.*, 555 F. Supp. 191, 194 (D. Md. 1983). State Law relating to franchise termination is specifically preempted. 15 U.S.C. § 2806(a). "In enacting the PMPA, Congress

attempted to provide national uniformity of petroleum franchise termination law. The purpose of uniformity would be frustrated if the PMPA was not given its preemptory intent. Accordingly, we find the PMPA preempts all inconsistent state law." *Herbert*, 806 F.2d at 892.

Congress did not intend either to authorize or to prohibit franchise assignments, but, as a general rule, left the matter to state law. S. Rep. *supra* at 901. However, the legislative history indicates that Congress anticipated potential conflict between federal termination and state assignment provisions and suggested a method of reconciliation:

For example, it is not intended that a franchisee may avoid the consequences of his own conduct which gave rise to a notice of termination or non-renewal by merely assigning his franchise after having been notified by the franchisor of the franchisor's intent to terminate or fail to renew. Such a result would not be countenanced under general principles of equity.

Id. To the extent that the applications of state law frustrate federal objectives, they are preempted. See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978). See also *Herbert*, 806 F.2d at 892 (PMPA preempts inconsistent state law). We are directed to harmonize the competing interests on a case-by-case basis. S. Rep., *supra* at 901.

[3] In this case, allowing Mastelotto to assign his franchise rights to Beneto (with whom he had a collateral agreement whereby Mastelotto would remain an Exxon dealer) would effectively deny Exxon its PMPA right to disassociate itself from Mastelotto. See 15 U.S.C. §§ 2802(b)(2)(C) and 2802(c)(12) (permitting termination of a franchise agreement if franchisee is convicted of a crime involving moral turpitude). California law authorizing treble damages for refusal to accept assignment of a petroleum franchise under notice of termination when that assignment would effectively avoid termination clearly is an obstacle to accomplishment of Congress' undisputed interest in a national, uniform policy for petroleum franchise termination. Therefore, we conclude that in this situation PMPA preempts California law. Accordingly, judgment for Humboldt/Mastelotto under Cal. Bus. & Prof. Code § 21148 is reversed and their cross-appeals are dismissed.

Since we dispose of this case on preemption grounds, we do not reach other issues raised by the parties. We remand to the district court for vacation of its order offsetting judgments.



APPENDIX A(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

HUMBOLDT OIL CO., INC.,
and MASTELOTTO,

Plaintiffs,

vs.

EXXON COMPANY, U.S.A.,
Defendant.

Civil R-82-29 BRT

EXXON COMPANY, U.S.A.,
Cross-Complainant,

vs

HUMBOLDT OIL CO., INC., BONUS
INTERNATIONAL CORPORATION, and
J. R. MASTELOTTO,
Cross- Defendants.

ORDER DENYING JUDGMENT N.O.V.
OR FOR A NEW TRIAL

Plaintiff Exxon has made a motion for judgment notwithstanding the jury verdicts in favor of Humboldt/Mastelotto (H/M) on three counterclaims. Joined therewith are motions for new trials.

The motions assert issues which are made solely on the basis of the insufficiency of the evidence and on legal questions regarding the applicability of California Business & Professional Code (B&P) §21148. No issue is raised regarding the propriety of the Court's instructions to the jury. Defendant H/M opposes the motion but seeks no affirmative relief. This order will ignore the jury verdicts of \$1.00 each on the breach of contract claims and the claim for intentional interference with prospective economic advantage as de minimis non curat lex.

On the second counterclaim for violation of B&P §21148 the jury

returned a verdict for H/M for \$750,000.00. This section provides:

§21148. Petroleum franchises; grounds for withholding consent to transfer; transfer fee

(a) Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person unless the franchisor demonstrates any of the following:

(1) The proposed purchaser of the franchise has less business experience and training than that normally required by the franchisor of prospective franchisees.

(2) The proposed purchaser of the franchise has less financial resources than that normally required by the franchisor of prospective franchisees.

(3) The proposed purchaser of the franchise does not satisfy the then-current uniformly applied requirements, if any, of the franchisor applicable to prospective franchisees.

(4) The proposed purchaser of the franchise operates a franchise under an agreement with a franchisor other than the franchisor to whom the sale, transfer, or assignment is proposed, if the then-current uniformly applied requirements, if any, of the franchisor precludes prospective franchisees from operating a franchise under an agreement with another franchisor.

(5) The franchisee has not offered in writing to sell, transfer, or assign the franchise to the franchisor on terms and conditions which are the same as those of the sale, transfer, or assignment of the franchise to the proposed purchaser, and the franchisee has not allowed the franchisor at least 30 days in which to accept or decline the franchisee's written offer, prior to the sale, transfer, or assignment of the franchise to the proposed purchaser.

(b) If the franchisor consents to the sale, transfer, or assignment of the franchise to a prospective purchaser, the franchisor may require the franchisee to pay a transfer fee to the franchisor, provided the amount of the fee is reasonable when compared to the sale price of the franchise and provided the fee is not required in an

effort to frustrate the proposed sale.

Treble damages were allowed pursuant to B&P §21140.4 which provides:

§21140.4 Actions; jurisdiction, treble damages, attorney fees and costs

Any person who is injured in his business or property by reason of a violation of this chapter may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him, and shall be awarded attorneys' fees together with the costs of the suit. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued.

For many years H/M had operated in California and Nevada as a qualified Exxon distributor. Each of the two distributor agreements was expressly non-assignable and neither had a territorial limitation. The non-assignability restriction is enforceable under Nevada law but not under California law (§21148). The agreements were governed in part by the federal Petroleum Marketing Act which deals specifically with the termination of petroleum franchises. 15 U.S.C. § 2801 et. seq. Section 2802 provides that no franchisor may terminate or fail to renew a franchise unless such termination "is based upon a ground described in paragraph (2)." Paragraph (2) provides: "For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise or nonrenewal of a franchise relationship: . . . (c)(12) conviction of the franchisee of any felony involving moral turpitude." Section 2806 of the Petroleum Marketing Act provides: "(b) Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise authorized by the provisions of such franchise or by any applicable provisions of state law which permits such transfer or assignment." Accordingly, the Court has held in this case that while the termination of the franchise agreements was controlled by the Petroleum Marketing Act, the transfer or assignment of the agreements was controlled by applicable state law.

Defendants argue first that the correct application of choice of law principles requires that this action be governed by Nevada law. If this contention is sustained the non-assignability clauses of the franchise agreements are enforceable. If California law governs, they are not.

A federal court must apply the choice of law rules of the forum in which it sits. *Klaxon v. Stentor Electric Mfg. Co.*, 313 U.S. 487 (1941). In order to select the proper rule, the nature of the action must be determined. Section 21140.4 of the B&P grants a private cause of action for treble damages to "any person who is injured in his business or property by reason of a violation of [Franchise Dealers Fair Practices Act, §§21140 et. seq.] . . ." While no cases have yet interpreted this section, the right of action is identical to that provided by federal law for violations of federal antitrust laws, see 15 U.S.C. § 15(a). It is well-settled that such an action sounds in tort. *Texas Industries, Inc. v. Radcliff Materials*, 451 U.S. 630, 634 and cases cited in n. 5 (1980).

The court previously decided that Nevada would utilize the Second Restatement's "most significant relationship" choice of law analysis, and through the application of that modern rule determined that California's Franchise Dealers Fair Practices Act applied to this case. The court stands by this result, and now adds that the same result is reached under the First Restatement. Under this traditional conflict of law analysis, the law of the place of the wrong governs the action. This may be the Nevada law, also. In *Southern Pacific Transportation Co. v. the United States*, 462 F.Supp. 1227 (D.C.E.D. Cal. 1978), Judge McBride thoroughly analysed the Nevada conflicts of laws precedents and concluded that the principle of *lex loci delictus commissi* was controlling under Nevada law. Restatement of Conflict of Laws § 378 et. seq. (1934). The place of the wrong is where the last event necessary to render the defendant liable occurred. *Id.* §377. The last event in this case would be injury to plaintiffs' business or property. B&P §21140.4. Although most of the plaintiffs' service stations were located in Nevada, it is beyond dispute that at all relevant times plaintiffs' business was rooted and headquartered in California.

The two franchise agreements were negotiated in California between H/M in Oroville, California and Exxon's California regional office. The conviction of Mastelotto which resulted in termination occurred in California. The notices of termination

were hand delivered by Exxon's regional manager to H/M in Oroville. The administrative proceedings were begun in California and concluded in Texas. The refusal to approve the transfer of the franchise agreements occurred in California. It is in California that plaintiffs' business suffered the consequences of defendant's conduct. *Cf. Albert Levine Associates v. Bertoni & Cotti*, 314 F.Supp. 169, 170-171 (S.D.N.Y. 1970).

Exxon argues the California cause of action is counter to Nevada public policy. The fact that the Nevada legislature has not enacted anything exactly like §21148 is of no concern. Nevada does have an Unfair Trade Practices Act which creates a remedy for its violation identical to that pursued here. *Compare* N.R.S. 598A.210(2) with B&P §§21140.4, 17070 and 17082. "A mere difference between the laws of the two states will not render the enforcement of a cause of action created in one state contrary to the public policy of another." Restatement of Conflict of Laws § 612 comment b. The existence of a treble damages penalty provision in N.R.S. 598A.210(2), combined with the approval of exemplary damages generally in N.R.S. 42.010 indicates the California cause of action is not inconsistent with Nevada public policy. The California Franchise Dealers Fair Practices Act governs the rights of the parties in this case.

Exxon's other principle contention is that the verdict of the jury is not supported by the evidence and is contrary to the preponderance of the evidence. This is not true. The evidence in this case supports the following scenario which apparently was believed by the jury.

H/M consummated two distributorship agreements with Exxon for the term April 1, 1981 to March 31, 1984. On or about November 20, 1981, two letters were hand delivered by G. A. Gallaher, Exxon's district manager, to Mastelotto notifying the latter that the two franchise agreements were terminated effective on February 28, 1982 because Mastelotto had been convicted of a felony involving moral turpitude. Exxon maintained a distributor grievance procedure (Ex. 8) which Mastelotto elected to pursue and the district level review of the termination action was held on October 30, 1981, attended by Gallaher and Catlin for Exxon, and Mastelotto and Thatcher for the franchisee. The principle subject of the discussion was Mastelotto's intention to disassociate himself from the business so that the termination letters could be revoked.

No relief was granted and H/M requested review by the Headquarters Distributor Relations Committee. This meeting was held on December 10, 1981 with Mastelotto, his attorney Spinetta, and Mr. Thatcher representing H/M, and Mr. Butler, Mr. Locher, Mr. Rucker, Mr. Steen, Mr. Randolph and Mrs. Sandison representing Exxon (Ex. 57). All suggested solutions were rejected except that H/M's time to "liquidate his business" was extended three months until May 28, 1982. This conclusion was communicated to Mastelotto. The latter contended that the liquidation of the business included the sale and transfer of the franchise agreements. Exxon's representatives contended that it applied only to the disposition of H/M's properties. Mastelotto's interpretation appears more reasonable inasmuch as H/M needed no help from Exxon to obtain an extension of time to sell the assets. Exxon's assistance was needed only for an extension of time to negotiate a transfer of the franchise agreements with or without the assets.

Prior to March 4, 1982, H/M received an offer from Steve Bonito, an Exxon distributor in Sacramento, California, to purchase H/M's franchises for \$250,000. Pursuant to section 21148 of the B&P this offer was communicated to Exxon by certified mail (Ex. 13). On March 25, 1982, this offer was rejected by District Manager Gallaher by letter stating "we do not believe that you have anything to offer and in any event, Exxon does not accept your offer."

Mr. Locher and another official of Exxon met Steve Bonito in Dallas, Texas on February 23, 1982. Bonito told them that he had an opportunity to buy the H/M franchises. The reply was that Mastelotto had nothing to sell and that the contracts terminated on February 28th. Exxon's interpretation of the December 10, 1981 "extension of time" is reiterated in Ex. 15, a letter dated March 25, 1982 to Spinetta from Sue Rucker, Exxon's general counsel.

On March 11, 1982, Steve Bonito wrote Gallaher (Ex.14) that "I have withdrawn my offer" to Mastelotto "because I understand he does not have a contract with Exxon." The primary import of this letter is that it confirms that Bonito had in fact made the offer referred to in Exhibit 13.

We believe that they jury may have reasonably concluded from the foregoing evidence that after making an agreement extending Mastelotto's time to May 28, 1982 to sell his franchises, Exxon disregarded the agreement and told Bonito that H/M had nothing

to sell and persuaded Bonito to write Gallaher that his offer to Mastelotto was withdrawn. Thus Exxon obstructed and prevented any formal presentation of such an offer to it as a supplement to the notification in Exhibit 13.

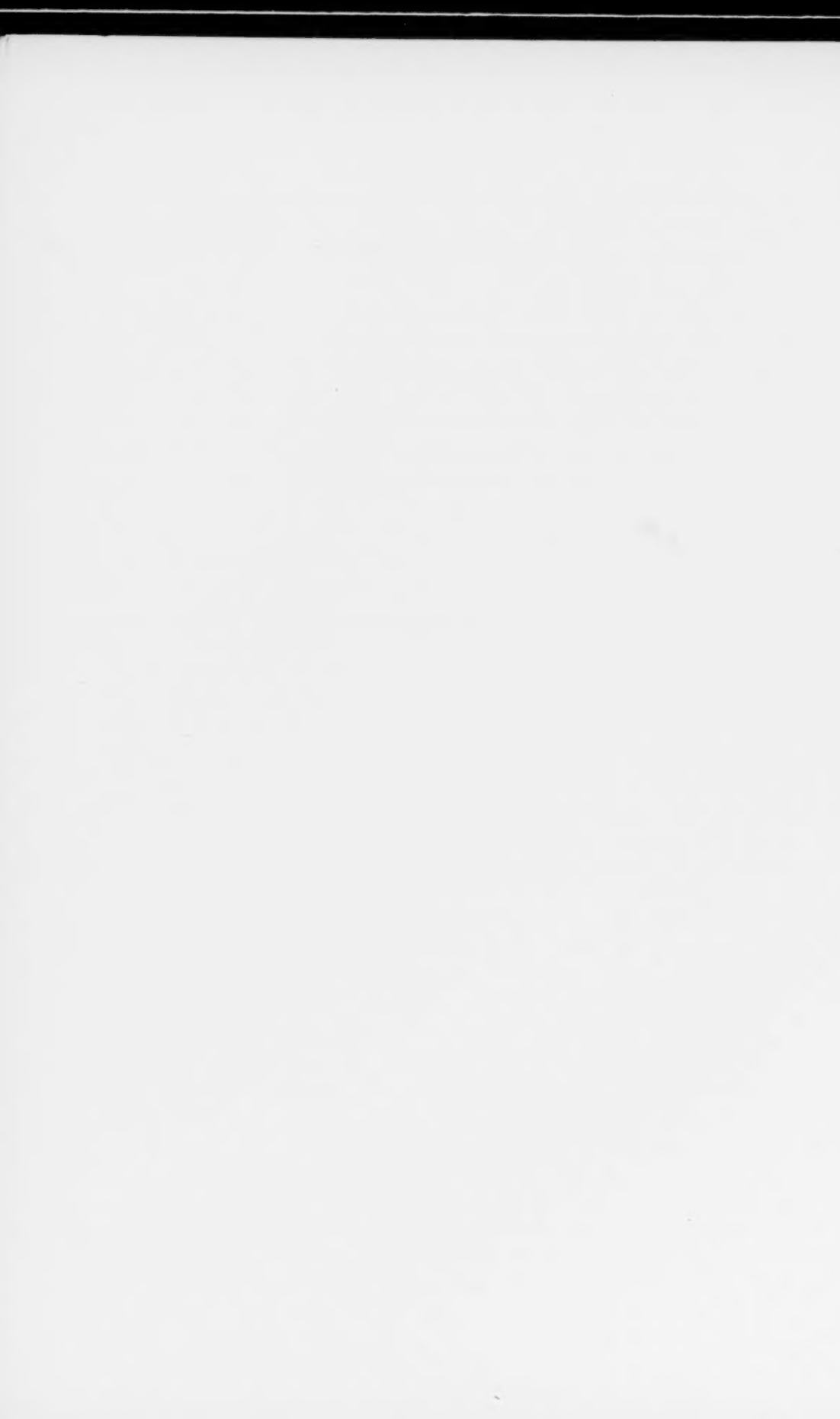
Testimonial assertions after the fact that Exxon would not have approved the proposed sale to Bonito in any event are speculative and highly suspect, such as the claim that it would not approve a non-resident distributor.

Inasmuch as we conclude that there is evidence to support the verdicts and they are not contrary to law,

IT HEREBY IS ORDERED that the motion of Exxon for a judgment notwithstanding the verdict or for a new trial, is denied.

DATED March 3, 1986.

UNITED STATES DISTRICT JUDGE



APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HUMBOLDT OIL CO., INC. and
J. R. MASTELOTTO,

Plaintiffs,

v.

EXXON COMPANY, U.S.A.,

Defendant.

FILED

Sep 10, 1987

CATHY A. CATTERSON,

CLERK

U.S. COURT OF APPEALS

Nos. 86-1916/1956

DC No.

R-82-29-BRT

ORDER

EXXON COMPANY, U.S.A.,

Cross-Complainant/Appellant/Appellee,

v.

HUMBOLDT OIL COMPANY, INC. and
J. R. MASTELOTTO,

Cross- Defendants/Appellees/Appellants,

and

BONUS INTERNATIONAL
CORPORATION,

Cross-Defendant/Appellee.

Before: SKOPIL, FARRIS, and O'SCANNLAIN, Circuit Judges

The Petition for Rehearing is DENIED.



APPENDIX C (1)

CALIFORNIA BUSINESS AND PROFESSIONS CODE

§21148. Withholding of consent to sale, transfer, or assignment of franchise; Transfer fee.

(a) Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person unless the franchisor demonstrates any of the following:

(1) The proposed purchaser of the franchise has less business experience and training than that normally required by the franchisor of prospective franchisees.

(2) The proposed purchaser of the franchise has less financial resources than that normally required by the franchisor of prospective franchisees.

(3) The proposed purchaser of the franchise does not satisfy the then-current uniformly applied requirements, if any, of the franchisor applicable to prospective franchisees.

(4) The proposed purchaser of the franchise operates a franchise under an agreement with a franchisor other than the franchisor to whom the sale, transfer, or assignment is proposed, if the then-current uniformly applied requirements, if any, of the franchisor precludes prospective franchisees from operating a franchise under an agreement with another franchisor.

(5) The franchisee has not offered in writing to sell, transfer, or assign the franchise to the franchisor on terms and conditions which are the same as those of the sale, transfer, or assignment of the franchise to the proposed purchaser; and the franchisee has not allowed the franchisor at least 30 days in which to either accept or decline the franchisee's written offer, prior to the sale, transfer, or assignment of the franchise to the proposed purchaser.

(b) If the franchisor consents to the sale, transfer, or assignment of the franchise to a prospective purchaser, the franchisor may require the franchisee to pay a transfer fee to the franchisor, provided the amount of the fee is reasonable when compared to the sale price of the franchise and provided the fee is not required in an effort to frustrate the proposed sale.



APPENDIX C (2)

PETROLEUM MARKETING PRACTICES

§2806. Relationship of statutory provision to State and local laws

(a) To the extent that any provision of this title applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) Nothing in this title authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise. (June 19, 1978, P.L. 95-297, Title I, § 106, 92 Stat. 332.)

APPENDIX D

Paragraph 13 of Humboldt/Mastelloto Distributor Agreements (Trial Exhibits 2 and 3)

13. TRADEMARKS: Buyer is permitted to display Seller's trademarks solely to designate the origin of said products and Buyer agrees that petroleum products of others will not be sold by Buyer under any trade name, trademark, brand name, label, insignia, symbol, or imprint owned by Seller or used by Seller in its business. Upon termination of this Agreement or prior thereto upon demand by Seller, Buyer shall discontinue the posting, mounting, display or other use of said names, marks, labels, insignia, symbols, or imprints except only to the extent they appear as labels or identification on products manufactured or sold by Seller and still in the containers or packages designed and furnished by Seller. Buyer is not a licensee of Seller's trademarks and shall not mix, commingle, adulterate, or otherwise change the composition of any of the products purchased hereunder and resold by Buyer under said names, marks, labels, insignia symbols, or imprints. Seller is hereby given the right to examine at any time, and from time to time, the contents of Buyer's tanks or containers in which said product(s) purchased hereunder are stored and take samples therefrom, and if in the opinion of Seller any samples thus taken are not said product(s) and in the condition in which delivered by Seller to Buyer, then Seller may at its option cancel and terminate this Agreement. If there shall be posted, mounted, or otherwise displayed on or in connection with the premises any sign, poster, placard, plate, device or form of advertising matter whether or not received from Seller, consisting in whole or in part of the name of Seller or any other trade name, trademark, brand name, label, insignia, symbol or imprint owned by Seller or used by Seller in its business, Buyer agrees at all times to display same properly and to discontinue the posting, mounting or display of same immediately upon Buyer's ceasing to sell Seller's branded motor fuel (or other brands or products of Seller) or in any event upon demand by Seller. Buyer further agrees to take no action which will diminish or dilute the value of such trademarks or other identifications owned or used by the Seller.

In furtherance of its obligations as set forth in the preceding

sentence of this Section, Buyer agrees that it will for itself, and as to any of its customers to whom Seller's trademark symbol has been provided or who is permitted the display of such trademark or other identification of Seller require of such customers that they will while identifying the source of the products sold at their premise(s), or any location operated directly by Buyer, with Seller's trademark or other identification of Seller comply with the foregoing, and will incorporate in its arrangements with such customers the undertakings provided in this paragraph and will assist in the enforcement thereof. Such assistance includes but is not limited to the authorization to Seller to commence legal proceedings in Buyer's name for the purposes of enforcing Buyer's obligations in this paragraph.

To permit Seller to carry out its right and obligation to protect its trademark from diminution, dilution, or destruction by misuse or failure by those to whom permission to display it has been granted hereunder, Buyer agrees that it will at least annually provide Seller with a list of the names and addresses to which Buyer has provided Seller's trademark symbol or other identification of Seller and where such locations are displaying Seller's trademark or other identification of Seller as the source of the products sold, it being understood and agreed that a breach of any provision of this Section 13 is an event which is relevant to the franchise relationship as defined in the Petroleum Marketing Practices Act (15 U.S.C.A. §§2801 et seq.) and as a result of which termination of the franchise or non-renewal of the franchise relationship as defined is reasonable.

PROOF OF SERVICES ON ALL PARTIES

I, Peter L. Spinetta, declare and certify as follows:

That I am a citizen of the United States and am employed in the City of Oakland, County Alameda, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1800 Harrison, Suite 1771, Oakland, California, 94612.

I served three (3) copies of the foregoing WRIT OF CERTIORARI, on the following named persons by placing true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Postal box at Oakland, California, on December 9, 1987, and February 5, 1988, addressed as follows:

JOHN R. REESE

WILLIAM BATES, III

McCutchen, Doyle, Brown & Enerson

Three Embarcadero Center

San Francisco, CA 94111

I served three (3) copies of the foregoing WRIT OF CERTIORARI, on the following named persons by placing true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Postal box at Oakland, California, on December 9, 1987, and February 5, 1988, addressed as follows:

JOHN C. RENSHAW

Vargas & Bartlett

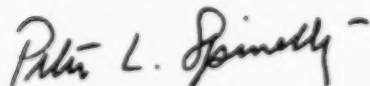
201 West Liberty Street

Reno, Nevada 89504

The foregoing are counsel of record for all parties required to be served pursuant to Rule 28.2 and 28.3 of the Revised Rules of the Supreme Court of the United States.

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on February 5, 1988 at Oakland, California.



PETER L. SPINETTA

(8)
No. 87-1482

Supreme Court, U.S.
FILED

APR 1 1988

JOSEPH F. SPANIOLO, JR.
CLERK

**In The
Supreme Court of the United States**
October Term, 1987

J. R. MASTELOTTO, HUMBOLDT OIL COMPANY,
and BONUS INTERNATIONAL CORPORATION,

Petitioners,

v.

EXXON COMPANY, U.S.A.,

Respondent.

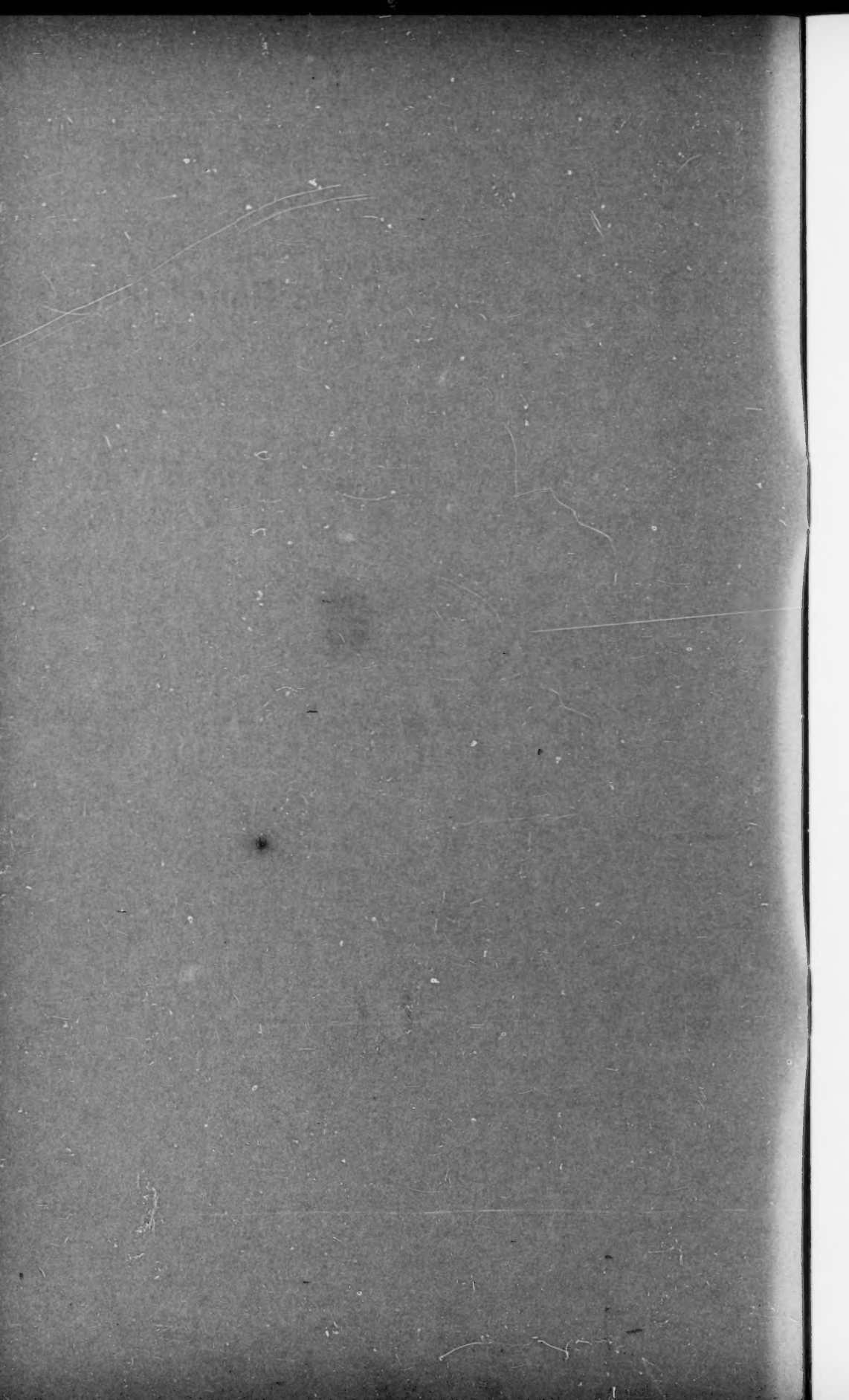
**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

JOHN R. REESE*
DONNA M. RYU
Three Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

*Attorneys for Respondent
Exxon Company, U.S.A.*

*Counsel of Record

McCUTCHEN, DOYLE,
BROWN & ENERSEN
Of Counsel



QUESTION PRESENTED

The court of appeals held that the federal Petroleum Marketing Practices Act ("PMPA") preempts a state law to the extent that the state law forbids conduct the PMPA expressly permits. Should this Court review that decision given that:

1. Petitioners admit there is no conflict among courts;
2. Petitioners admit that a decision by this Court would not establish significant precedent because the facts presented are not likely to recur; and
3. Petitioners' contentions in this Court were not made below and in fact are inconsistent with Petitioners' position at trial?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INTRODUCTION	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	5
REASONS FOR DENYING THE WRIT	6
I. NOTHING ABOUT THIS CASE SUGGESTS THAT SUPREME COURT REVIEW IS PROPER	6
II. PETITIONERS' CURRENT ARGUMENTS ARE (A) HYPOTHETICAL, AND (B) WRONG	6
CONCLUSION	9
SUPREME COURT RULE 28.1 LIST	A-1

TABLE OF AUTHORITIES

Page

CASES

<i>Humboldt Oil Co. v. Exxon Co.</i> , 695 F.2d 386 (9th Cir. 1982)	3
<i>United States v. Mastelotto</i> , No. 80-0454-01 (N.D. Cal. 1983)	3
<i>United States v. Mastelotto</i> , 717 F.2d 1238 (9th Cir. 1983)	3

STATUTES AND RULES

15 U.S.C. § 2801 <i>et seq.</i>	1
15 U.S.C. § 2802(b)(2)(C)	3, 8
15 U.S.C. § 2802(c)(12)	3, 8
California Business & Professions Code § 21140.4	4
California Business & Professions Code § 21148	3, 4

MISCELLANEOUS

S. Rep. No. 731, 95th Cong., 2d Sess. 19 (1978), <i>reprinted in U.S. Code Cong. & Admin. News</i> 873, 901	5
-----------------------------------------------------------------------------------------------------------------------------	---



No. 87-1482

In The
Supreme Court of the United States
October Term, 1987

J. R. MASTELOTTO, HUMBOLDT OIL COMPANY,
and BONUS INTERNATIONAL CORPORATION,

Petitioners,

v.

EXXON COMPANY, U.S.A.,

Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

INTRODUCTION

Congress directed that in deciding whether the PMPA, 15 U.S.C. § 2801 *et seq.*, preempts state law, the courts should analyze the “competing interests on a case-by-case basis.” (App. A(1) p. 4)¹ The court of appeals followed

1. In addition to citations to the Petition (“Pet.”) and its Appendix (“App.”), documents are cited by their docket numbers in the Clerk’s Record (“CR”), and Trial Exhibits are cited “TE”. Volumes I and II of the Reporter’s Transcript are cited by volume and page, e.g. II RT 36.

that directive and, on the unique facts of this case, correctly found that the PMPA preempted California assignment law. That should have ended the matter.

Instead, Petitioners have doggedly pursued their preempted state law claim to this Court. They admit there is no decisional conflict. (Pet. 5) They admit that this case will not establish important precedent. (Id.) They even admit that the "wrong" they complain of "lies not so much in the result wrought by" the Ninth Circuit. (Id.)² Petitioners don't even pretend (and couldn't) that the peculiar circumstances of this case meet the usual standards for review by this Court. They seek an audience here "as the court of last resort" (Pet. 5) simply because they are unhappy with the result below. That is not the standard for Supreme Court review.

Worse, the case that Petitioners ask this Court to review is not the case presented below. Ignoring the record, Petitioners devise new arguments about hypothetical facts that were never litigated at trial, and were first raised only as a lawyer's afterthought in a Petition for Rehearing after the Ninth Circuit already had ruled against them. Moreover, even Petitioners' newly-wrought facts and arguments would not change the result below. The Petition should be denied.

o

2. In the Question Presented and Statement of the Case, Petitioners promise a case of constitutional proportion; they identify the "wrong" as the Ninth Circuit's failure to base its decision against them in "fact, law or logic," thus violating Due Process rights. (Pet. 1, 5) By the time Petitioners reached their Argument, they could not find anything to say in support of such a claim.

STATEMENT OF THE CASE

J. R. Mastelotto and his corporation, Humboldt Oil Co., Inc. bought and distributed Exxon branded gasoline and oil pursuant to two distributorship agreements with Exxon Company, U.S.A. ("Exxon"). Mastelotto was convicted of ten felony counts of fraud for falsely labeling and selling used, re-refined oil as major brand unused oil at unused oil prices. (CR 10, Ex. A, ¶ 7; App. A(1) p. 2; *United States v. Mastelotto*, No. 80-0454-01 (N.D. Cal. 1983)) Exxon then terminated the distributorship agreements pursuant to the specific provisions of the PMPA that permit termination if the franchisee is convicted of a felony. (15 U.S.C. §§ 2802(b)(2)(C) and (c)(12)) The Ninth Circuit confirmed that the terminations were proper and valid under the PMPA. *Humboldt Oil Co. v. Exxon Co.*, 695 F.2d 386 (9th Cir. 1982)³

Mastelotto devised a plan to remain an Exxon dealer despite the terminations. After receiving notice of termination, he allegedly entered into a deal to sell and assign the two franchises to Steve Beneto for \$250,000 cash. The deal included a collateral promise that Beneto would turn around and supply Mastelotto with Exxon products for resale. (App. A(1) p. 2; II RT 180-85; II RT 233)

Mastelotto then offered Exxon an option to repurchase the franchises pursuant to California Business & Professions Code § 21148 for \$250,000 cash, "the same

3. Although Mastelotto's conviction was reversed on appeal, *United States v. Mastelotto*, 717 F.2d 1238 (9th Cir. 1983), he eventually plead guilty to five charges, including felony mail fraud and felony fraud by wire. (TE 58, II RT 126-27)

offer" received from Steve Beneto. (TE 13) Exxon rejected the offer; it believed that since the agreements had been properly terminated, the franchisee had nothing left to offer. (TE 16, 17) Meanwhile, Mastelotto had stopped paying for products he received from Exxon, eventually running up an \$816,000 bill. (App. A(1) p. 2)

Mastelotto sued Exxon for damages. He claimed that, although the franchise agreements themselves prohibited assignment, Exxon was compelled by the California statute to approve of his alleged assignments to Beneto (II RT 142, 139; App. A(1) p. 2), and that Exxon had wrongfully failed to consent. Exxon counterclaimed for the amount owed to it by Mastelotto. A jury awarded Exxon \$816,681.81, but the court offset that amount by two \$1 verdicts for Mastelotto on common-law claims, and a \$750,000 award under California Business & Professions Code §§ 21148 and 21140.4. (App. A(1) pp. 2-3)⁴

The court of appeals held that in this situation, the PMPA preempts § 21148 since allowing Mastelotto to assign his franchise rights to Beneto pursuant to an agreement by which Beneto would sell the products back to Mastelotto for resale to the public would "effectively deny Exxon its PMPA right to disassociate itself from Mastelotto," a convicted felon. (App. A(1) p. 4)

The court found strong support in the PMPA's legislative history, which explored anticipated conflicts between state assignment law and PMPA termination law,

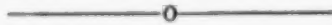
4. The jury awarded \$250,000 for the alleged lost sale to Beneto, and this award was then trebled to \$750,000 under the mandatory trebling provision of Section 21140.4.

and posited an "extreme" example. This "extreme" foretold Mastelotto's exact circumstances, and left no doubt as to the proper outcome:

For example, it is not intended that a franchisee may avoid the consequences of his own conduct which gave rise to a notice of termination or non-renewal by merely assigning his franchise after having been notified by the franchisor of the franchisor's intent to terminate or fail to renew. Such a result would not be countenanced under general principles of equity.

(App. A(1) p. 4; S. Rep. No. 731, 95th Cong., 2d Sess. 19 (1978), *reprinted in* U.S. Code Cong. & Admin. News 873, 901.

The Ninth Circuit denied Mastelotto's Petition for Rehearing on September 10, 1987. (App. B)



SUMMARY OF ARGUMENT

Petitioners concede that this case lacks the characteristics that warrant this Court's review. (Pet. 5) Exxon agrees.

Furthermore, the facts and arguments Petitioners now posit were never mentioned in the trial court. In fact, they are inconsistent with their position at trial. They first appeared in their Petition for Rehearing in the Ninth Circuit, and were the product of hindsight and speculation. That alone is enough reason to deny this Petition.

Finally, even if proper, Petitioners' exercise in hypothesis does not alter the result. Their theory would re-

quire Exxon to consent to an assignment of a franchise while intending not to permit a critical term of the assignment (the resupply agreement between Beneto and Mastelotto) to be carried out. This is a recipe for confusion and controversy and it cannot be right.

o

REASONS FOR DENYING THE WRIT

I.

NOTHING ABOUT THIS CASE SUGGESTS THAT SUPREME COURT REVIEW IS PROPER.

Petitioners fail to present a single viable reason why this Court should review this case. As they concede, there is no conflict of decisions in this area, nor does the case present a recurring fact pattern.⁵ It doesn't raise a substantial federal question, for, although the Ninth Circuit decided on preemption grounds, Petitioners have "no quarrel" with the court's analysis of the PMPA's objectives, and concur that the PMPA grants Exxon "the right to disassociate itself" from Mastelotto in this instance. (Pet. 8) In sum, Petitioners give no reason to prolong this matter.

II.

PETITIONERS' CURRENT ARGUMENTS ARE (A) HYPOTHETICAL, AND (B) WRONG.

A.

At trial, Mastelotto's counsel stated in his closing argument that if the alleged deal with Beneto had gone

5. Petitioners cite no case, and Exxon could find none, that conflict with this decision, or raise a fact situation remotely similar to this one.

through, "Mr. Beneto would have continued to sell Exxon product to Mr. Mastelotto, [and Exxon] would not have been able to disassociate themselves from this man as they wanted to disassociate themselves." (RT 78) That was the theory on which the case was tried and put to the jury.

Petitioners now assert a different and inconsistent theory. They hypothesize that Exxon could have allowed an assignment to Beneto without interferring with Exxon's right to disassociate itself from a felon. These new "what if" arguments were never presented to the trial court (or even to the court of appeals until Mastelotto's Petition for Rehearing). This Court should not consider them.

B.

But even assuming that Petitioners' arguments are legitimately before this Court, they make no sense and they do not lead to a different result. Petitioners have two theories. First, they say that after the assignment, Exxon could have stepped in between Mastelotto and Beneto and demanded that Mastelotto not use the Exxon brand. (Pet. 6) They point to ¶ 13 of Exxon's distributor agreements with Mastelotto, which may give Exxon the right to demand that a distributor stop using the brand name. It also requires a distributor to obtain agreements from its customers that ¶ 13 will bind them as well.

To begin with, having consented to the deal between Mastelotto and Beneto, Exxon could hardly interfere with it as Petitioners propose. The most Exxon could hope for from doing that would be the prospect of more litigation. The result would be confusion and uncertainty about the parties' rights, and particularly Exxon's admitted

right to disassociate itself from Mastelotto. That cannot be a sound legal doctrine.

Petitioners' second argument is even more far-fetched. They propose that Exxon could have conditioned its approval of assignment on Beneto's promise not to "brand" Mastelotto as an Exxon dealer.⁶

First, that is pure make believe. There was no evidence that such a deal would have been attractive to anyone. In fact, for Mastelotto to buy branded gasoline from Beneto (at branded prices) and then try to resell it as unbranded gasoline (at unbranded prices) would make no economic sense whatever.

Second, the proposed condition is in clear conflict with the collateral agreement between Mastelotto and Beneto. If Exxon knew of that agreement when it consented, Exxon may well have been estopped from trying to enforce the condition. Again, it is likely that Exxon would have been forced to litigate to disentangle itself from Mastelotto, with no guarantee of success. This confusion, uncertainty, and undue expense cannot be what Congress had in mind when it gave Exxon the right not to do business with and have its products marketed to the public by a convicted felon. 15 U.S.C. §§ 2802(b)(2)(C) and (c)(12).

In short, Petitioners' suppositional arguments get them nowhere.

o

6. This assumes that Mastelotto would be "disassociated" if he ran a non-branded retail outfit selling Exxon-supplied products to the public. But "disassociation" is broader than merely not letting someone use your brand name. In these circumstances it encompasses the right to not have convicted felons in the chain of distribution of one's products at all.

CONCLUSION

For the reasons stated, the Petition should be denied.

Dated: April 1, 1988.

Respectfully submitted,

JOHN R. REESE*

DONNA M. RYU

Three Embarcadero Center

San Francisco, CA 94111

Telephone: (415) 393-2000

Attorneys for Respondent

Exxon Company, U.S.A.

*Counsel of Record

McCUTCHEN, DOYLE,

BROWN & ENERSEN

Of Counsel

311

312

App. 1

APPENDIX A

**LIST OF RELATED ENTITIES PURSUANT TO
SUPREME COURT RULE 28.1**

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned*

Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit beschränkter
Haftung
Aircraft Fuel Supply B. V.
Aishin Sekiyu K. K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
A/S Futurum
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
BEB Erdgas und Erdol GmbH, Hannover
B.W.O.C., Inc.
Bangkok Aviation Fuel Services Limited

* Does not include companies with less than 5% Exxon
Ownership.

App. 2

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
Bel-Air Entreposage S. A.
BRIGITTA Erdgas und Erdol GmbH, Hanover
Bryan Woodbine Gathering Inc.
Building Products of Canada Limited
Bryon Creek Collieries (1983) Limited
Carlew Inc.
Carnduff Gas Limited
Cary Chemicals Inc.
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Commercial Polymers Pty. Ltd.
Compagnie d'Etancheite Africaine en Cote
d'Ivoire S.A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oxonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
DFTG Deutsche Flussigerdgas Terminal GmbH
D.O.C. Dutch Offshore Consortium B.V.
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Daitso Sangyo K.K.
Demulsificantes Del Orinoco, C.A.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dukhan Service Company

App. 3

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eastcoast Spill Response Inc.
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdol GmbH, Hannover
Elwerath Erdol und Erdgas AG
Emirates Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Entrepot Petrolier de Mulhouse (E.P.M.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C. A.
Esso Chemical Alberta Limited
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Etablissements Cloarec
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
F. T. Giken Kabushiki Kaisha
Fergas Nordbayern G.m.b.H.
Fergas Salzgitter GmbH
Forjas de Colombia, S. A.
489061 Ontario Inc.
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited

App. 4

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane—Lavera
Gewerkschaft Brassert Erdol und Erdgas GmbH
Gewerkschaft Elwerath & Co. GmbH.
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gewerkschaft Gute Hoffnung Erdgas und Erdol GmbH
Gewerkschaft Kuchenberg Erdgas under Erdol GmbH
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier de Nantes
Groupement Petrolier du Finistere G.I.E.
Groupement pour l'Etude d'un Pipeline
 Bordeaux Toulouse
Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K. K.
Home Oil Company Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industry Promotion Enterprises Limited
Interprovincial Pipe Line (Alberta) Ltd.

App. 5

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K. K.

App. 6

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K. K.
Kyushu Eagle K.K.
LPL Investments, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzernisches Erdol
Leco Inc.
Les Docks des Petroles d'Ambes
Limburgsche Maatschappij voor Gasdistributie
 Limagas N. V.
Long Beach Oil Development Company
Maasvlakte Olie Terminal N.V.
Maasvlakte Coal Terminal B.V.
Maatschappij voor Intercommunale Gasdistributie
 Intergas N.V.
Maatschappij voor Intercommunale Gasvoorziening
 in Oost-Brabant "OBRAGAS N.V."
Magota Sekiyu K.K.
Mainline Pipelines Limited
Maple Leaf Petroleum Limited
Maquinas de Coser y Bordar Sigma, S. A.
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Metro Fuel Co. Ltd.
Mikawa Bussan K.K.
Mittelrheinische Erdgas Transport Gesellschaft
 mit beschränkter Haftung
Montreal Pipe Line Limited/Les Pipe-Lines
 Montreal Limitee
Mytex Polymers Incorporated

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

NAM—K 7 B.V.
NAM—K 14 B.V.
NAM—K 15 B.V.
NAM/CLOMS—K 8/K 11 B.V.
NAM/CLOMS—L 13 B.V.
N. V. Nederlandse Gasunie
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.
Nordrheinische Erdgas Transport Gesellschaft
mit beschränkter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
107580 Canada Inc.
139675 Canada Limited
151742 Canada Inc.
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Osaka Ashyu Nenryou K.K.
Osaka Propane Gas Hanbai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.
P.T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pinpoint Retail Systems Inc.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH
Portland Pipe Line Corporation
Primaer Oel GmbH
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S. A.
Renown Building Materials Limited
Rheingaz Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)
Rotterdam-Antwerpen Pijpleiding (Nederland) N. V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur
Territoire Genevois (SAPPRO)
SEAG Aktiengesellschaft fur schweizerisches Erdol
S.O.P.—Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanyo Sekiyu K.K.

App. 9

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Saraco S. A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
Scurry-Rainbow Oil Limited
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K. K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiores de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana
Olii Minerali-SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants
de Madagascar"—PROLUMA S.A.
Societe Belge de Transport par Pipeline
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la
Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Societe de la Raffinerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants
Aviation Dakar-Yoff, S. A.
Societe de Promotion et de Financement
Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement
d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation
Petrolieres Esso Rep
Societe Francaise Exxon Chemical
Societe "Geomines-Caen"
Societe Havraise de Manutention de
Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company
(Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft
mit beschränkter Haftung
Sun East Company Ltd.
Supertex, Inc.

EXXON CORPORATION
Affiliates and Subsidiaries—Not Wholly-Owned

Sydis, Inc.
Synerude Canada Ltd.
Synergistics Industries Limited
System Plaza Kabushiki Kaisha
305120 Alberta Ltd.
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Takahama Kosan Kabushiki Kaisha
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecnica Quimica Petrolera, S.A. de C. V.
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.
Toko Sekiyu K.K.
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Towa Compounding Co. Ltd.
Towa Sekiyu K.K.
Toyoshina Film Company Ltd.

App. 12

EXXON CORPORATION

Affiliates and Subsidiaries—Not Wholly-Owned

Trans-Arabian Pipe Line Company
Transalpine Oelleitung in Oesterreich
Gesellschaft m.b.H.
Transgaz Lavera
Tsurmaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG—Unterflurbetankungsanlage
Flughafen Zurich
Van Salt Water Disposal Company
W.A.G. Pipeline Proprietary Limited
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdolleitungen-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Winnipeg Pipe Line Company Limited
Wohnungsbaugesellschaft, Steimbke-Rodewald G.m.b.H.
Worex et Cie
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshiki Sekiyu Kabushiki Kaisha
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Posai Center

